

APPEAL NO. 040236
FILED MARCH 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 7, 2004. The hearing officer determined that: (1) the compensable injury of _____, does not include damage at the C5-6 level including foraminal stenosis and degenerative spondylosis; and (2) the appellant (claimant) did not have disability from April 16 through July 20, 2003. The claimant appeals these determinations on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant attached new evidence to her appeal in support of her case. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result, nor is it shown that the documents could not have been obtained prior to the hearing below. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered for the first time on appeal.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant complains that she was badgered by the carrier's attorney, that she was so confused that she would have admitted to anything, and "no one stopped or tried to stop that intimidation." We note that the claimant did not raise an objection on this basis at the hearing below. Additionally, our review of the record reveals that the CCH was conducted in a fair and impartial manner, and we cannot agree that the claimant's testimony was the result of "intimidation." Accordingly, we find no basis to reverse the hearing officer's decision.

The claimant also appears to complain of ineffective assistance of counsel. The Appeals Panel does not review the competency or tactics of a licensed attorney in proceedings before the Texas Workers' Compensation Commission. Texas Workers' Compensation Commission Appeal No. 941271, decided October 31, 1994. Accordingly, we decline to reverse the hearing officer's decision on this basis.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **ACE FIRE UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge